Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and place it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14383 (70 FR 70713, November 23, 2005), and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–25000; Directorate Identifier 2006–NM–096–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 28, 2006.

Affected ADs

(b) This AD revises AD 2005–24–03.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, and –800 series airplanes; line numbers 1 through 761 inclusive, except for line numbers 596, 683, 742, 749, 750, 751, 754, 755, 759, and 760; certificated in any category.

Unsafe Condition

(d) This AD results from a determination that errors were inadvertently included in the existing AD. We are issuing this AD to prevent inadequate fastener clamp-up, which could result in cracking of the fastener holes, cracking along the lower wing skin panels, fuel leaking from the wing fuel tanks onto the engines, and possible fire.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements In AD 2005–24–03

Inspection/Measurement and Related Investigative and Corrective Actions

(f) At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD: Inspect/measure the length of certain attachment fasteners between the lower wing skin panels and the nacelle support fittings. Do the inspection/measurement, and all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–57–1275, Revision 1, dated August 18, 2005, except as provided by paragraph (g) of this AD.

(1) For Model 737–700 series airplanes modified by Supplemental Type Certificate (STC) ST00830SE as of December 28, 2005 (the effective date of AD 2005–24–03): Accomplish the actions at the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Prior to the accumulation of 25,000 total flight hours or 25,000 total flight cycles, whichever is first.

(ii) Within 12 months after December 28, 2005.

(2) For all other airplanes: Accomplish the actions at the later of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Prior to the accumulation of 30,000 total flight hours or 30,000 total flight cycles, whichever is first.

(ii) Within 12 months after December 28, 2005.

(g) If accomplishing a corrective action as required by paragraph (f) of this AD, and the service bulletin specifies to contact Boeing for repair information: Before further flight, do the repair using a method approved in accordance with paragraph (i) of this AD.

Actions Accomplished According to Previous Issue of Service Bulletin

(h) Actions accomplished before December 28, 2005, in accordance with Boeing Service Bulletin 737–57–1275, dated September 4, 2003, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously in accordance with AD 2005–24–03, amendment 39–14383, are approved as AMOCs for the corresponding provisions of this AD.

(3) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(4) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on June 5, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–9174 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2006–25002; Notice No. 06–06]

RIN 2120–AH31

Safe, Efficient Use and Preservation of the Navigable Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the regulations governing objects that may affect the navigable airspace. Specifically, the FAA is proposing to add notification requirements and obstruction standards for electromagnetic interference and amend the obstruction standards for civil airport imaginary surfaces to more closely align these standards with FAA airport design and instrument approach procedure criteria. The FAA proposes to require proponents to file with the agency a notice of proposed construction or alteration of structures near private use airports that have an FAA approved instrument approach procedure. This proposal, if adopted, would also increase the number of days in which a notice must be filed with the FAA before beginning construction or alteration; add and amend definitions

for terms commonly used during the aeronautical evaluation process; and remove the provisions for public hearings and antenna farms. Lastly, the FAA proposes to retitle the rule and reformat it into sections that closely reflect the aeronautical study process. These proposals incorporate case law and legislative action, and simplify the rule language. The intended effect of these proposed changes is to improve safety and promote the efficient use of the National Airspace System.

DATES: Send your comments on or before September 11, 2006.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–25002 using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time. You can also go to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical issues: Ellen Crum, Office of Airspace and Rules, ATO–R, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

For legal issues: Lorelei Peter, Office of Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to participate in this rulemaking by submitting written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets. This includes the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/fr/index.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

History

National Airspace Review

On June 17, 1978, the FAA published a notice in the **Federal Register** (43 FR 26322) announcing a regulatory review of part 77. The FAA issued this notice in response to comments received to a June 16, 1977, advance notice of proposed rulemaking (ANPRM) (42 FR 30643). In the ANPRM, the FAA had asked the public to review FAA obstruction evaluation issues and to recommend changes to part 77. The FAA addressed comments received in response to the ANPRM in a program review conference, referred to as the National Airspace Review (NAR). The NAR was held December 4 through 8, 1978, and included participants from the FAA, the aviation industry, the Department of Defense, and State government aviation agencies. These

participants are identified in this document and NAR reports as ''the Committee.'' In part, the Committee objective was to conduct a comprehensive review of airspace use and the procedural aspects of the air traffic control (ATC) system. On December 4, 1984, the committee gave 27 recommendations to the FAA to simplify and clarify existing part 77 regulations.

The Airport and Airway Safety and Capacity Expansion Act of 1987

On December 30, 1987, the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223) (the ''Act''), was signed into law. The Act amended former section 1101 of the Federal Aviation Act of 1958, now recodified at 49 U.S.C. 44718, with three major provisions. The major provisions concerned notice of construction, aeronautical studies, and coordination.

First, before the Act, former section 1101 required notice of proposed construction or alteration where notice would ''promote safety in air commerce.'' Under the Act, notice is now required to ''promote (1) safety in air commerce; and (2) the efficient use and preservation of the navigational airspace and airport traffic capacity at public-use airports'' (49 U.S.C. 44718(a)). Since this enactment, agency policy has been revised to include these considerations into FAA aeronautical studies to facilitate determination of the potential adverse effects of a structure.

Second, the Act also requires an aeronautical study if a proposed structure may constitute ''* * * an obstruction of navigable airspace or an interference with air navigation facilities and equipment or navigable airport * * *.'' (49 U.S.C. 41718(b)) The term ''interference'' was not defined in the Act. However, the Conference Report (House of Representative Report 100–484, December 15, 1987) states that ''interference'' includes both physical and electromagnetic effects. While the effects of Electromagnetic Interference (EMI) are currently studied under the FAA's authority under section 40103 for the safe operation of the National Airspace System, the Act now requires consideration of EMI effects on the safe and efficient use of the airspace. In order to carry out this statutory responsibility and determine whether EMI would be present, the FAA must expand the current notice requirements in part 77 to include proposed construction/alteration that may produce EMI and the corresponding obstruction standards.

The Act also requires that the FAA issue a full report on the adverse impact to the safe and efficient use of the airspace. This includes impacts on arrival and departure procedures for aircraft operating under visual or instrument flight rules, impacts on public-use airports and aeronautical facilities, and cumulative impacts of a structure when combined with the impact of other existing or proposed structures (49 U.S.C. 41718(b)). In accordance with the Act, the FAA is proposing to include the assessment of cumulative impact, as part of aeronautical study, in the revised part 77. FAA policy has already incorporated procedures to assess for cumulative impact during the aeronautical study.

Third, and with respect to broadcast applications and tower studies, the Act requires the FAA and the Federal Communications Commission (FCC) to ''* * * efficiently coordinate the receipt, considerations of, and action upon, such applications and the completion of associated aeronautical studies * * * '' Considerable coordination currently exists between the FAA and FCC since this enactment. If further coordination procedures are necessary, the agencies will develop them jointly. We do not believe, however, that any change to part 77 is appropriate or necessary because of this statutory provision.

Related Regulatory Actions

Notice of Proposed Rulemaking (NPRM)

On August 3, 1990, the FAA published an NPRM in the **Federal Register** proposing to amend part 77 (55 FR 31722). This notice was later corrected in the following documents: 55 FR 32999, August 13, 1990; 55 FR 35152, August 28, 1990; and 55 FR 37287, September 10, 1990 (1990 NPRM). The 1990 NPRM proposed amendments to the scope, notice requirements, and standards applicable to aeronautical studies detailed under part 77. The proposed amendments were triggered by the new requirements set forth in Public Law 100–223 and the NAR recommendations previously mentioned. This proposal retains some of the NAR recommendations that were originally proposed in the 1990 NPRM, and proposes modifications to or variations of other NAR recommendations. Certain other NAR recommendations are not being proposed now because of changed circumstances.

Supplemental Notice of Proposed Rulemaking (SNPRM)

On October 16, 1995, the FAA issued an SNPRM proposing to amend the application of obstruction standards used in an aeronautical study of the construction or alteration of objects affecting the navigable airspace (55 FR 53680). The FAA issued the SNPRM as a result of the decision in *Greater Orlando Aviation Authority* v. *the FAA*, 939 F.2d 954 (11th Cir. 1991) (''GOAA'').

The decision in this case affects long-standing FAA policy and practice regarding the consideration given to airport plans ''on file'' with the FAA, or ''on file'' with an appropriate military service. In the SNPRM issued as a result of the GOAA decision, the agency proposed to amend the application of obstruction standards to include consideration of any airport proposal received before the end of the comment period for an aeronautical study. This case and its effect on the aeronautical study process is discussed later in this Notice.

NPRM/SNPRM Withdrawal

As previously stated, proposed amendments and revisions to part 77 have been under discussion and proposed in the **Federal Register** several times over the last two decades. However, each time the agency was close to issuing a final rule, a significant change, either legislative or industry-wide, occurred that required rethinking and restructuring the proposal. The telecommunications industry, with the advent of personal communications systems, has evolved such that many of the previous recommendations, proposals and comments are no longer valid. In addition, Public Law 100–223 and the GOAA decision changed the way the FAA conducts aeronautical evaluations. Rather than proceed with previously proposed regulations that no longer completely reflect the needs of the FAA's obstruction evaluation program or the needs of the general public, the FAA withdrew the previously issued NPRM and SNPRM (68 FR 43885; July 24, 2003). We believe the best interests of all parties were served by this course of action.

FAA Authority

The Administrator has broad authority to regulate the safe and efficient use of the navigable airspace (49 U.S.C. 40103(a)). The Administrator is also authorized to issue air traffic rules and regulations to govern the flight, the navigation, protection, and identification of aircraft for the

protection of person and property on the ground, and for the efficient use of the navigable airspace (49 U.S.C. 40103 (b)). The Administrator may also conduct investigations and prescribe regulations, standards, and procedures in carrying out the authority under this part (49 U.S.C. 40113). Moreover, the Administrator is authorized to protect civil aircraft in air commerce (49 U.S.C. 44070(a)(5)).

Specifically, section 44718 provides that under regulations issued by the Administrator, notice is required for any construction, alteration, establishment, or expansion of a structure or sanitary landfill, when the notice will promote safety in air commerce, and the efficient use and preservation of the navigable airspace and airport traffic capacity at public use airports. This statutory provision also provides that, under regulations issued by the Administrator, the agency determines whether such construction or alteration is an obstruction of the navigable airspace or an interference with air navigation facilities and equipment or the navigable airspace. If a determination is made that the construction or alteration creates an obstruction or otherwise interferes, the agency then conducts an aeronautical study to determine adverse impacts on the safe and efficient use of the airspace, facilities, or equipment.

One Engine Inoperative (OEI) Procedures

Two-engine aircraft certificated under part 25 and operated under Parts 121 and 135 of the Federal Aviation Regulations must be able to takeoff and climb at a gradient roughly equivalent to 1.6% (62.5:10) with one engine inoperative (OEI), and clear obstacles by at least 35 feet vertically and at least 300 feet horizontally. These procedures vary widely among airlines, aircraft type, and aircraft configuration. Because building construction surrounding the nation's airports has steadily been increasing, the airlines have requested that the affect to their OEI procedures of proposed structures be considered when the FAA conducts an aeronautical study.

The agency is researching the matter, and at this time, has not determined whether or not rulemaking is the appropriate vehicle to resolve this issue. Consequently, this issue is outside the scope of this NPRM.

The Airport Obstruction Standards Committee (AOSC) has been tasked with examining the issue. In September, 2005, the AOSC hosted a meeting with the users to gather information and discuss this matter. In March, 2006, in response to user requests, the FAA began posting notices of proposed construction on its OEAAA public Web site (oeaaa.faa.gov). At the time of publication of this NPRM, many courses of action are under review. As the Agency continues its analysis, we will make every effort to seek input, and inform the public of any policy changes.

Discussion of the Proposal

The following is a discussion of the major proposals contained in this notice. Since one of the changes proposed is the formatting of the subparts and sections of regulatory text, this discussion will be by topic, and in most cases does not refer to specific paragraph sections.

Rule Title and Format

The FAA proposes to retitle part 77 from ''Objects Affecting Navigable Airspace'' to ''Safe, Efficient Use, and Preservation of the Navigable Airspace.'' Title 49 of the United States Code (U.S.C.), section 44718, provides for the Secretary of Transportation to promulgate regulations which require a person to provide public notice of certain construction or alterations when that notice will promote safety in air commerce and the efficient use and preservation of the navigable airspace and of airport traffic capacity at public use airports. The proposed title would accurately reflect the purpose and intent of this rule and closely reflects the legislative language.

The FAA also proposes to reformat the rule into subparts entitled, ''General,'' ''Notice Requirements,'' ''Standards for Determining Obstructions to Air Navigation,'' ''Aeronautical Studies and Determinations,'' and ''Petitions for Discretionary Review.'' This proposed format aligns with the process sequence used by the FAA for the current obstruction evaluation process and would make finding information easier.

Definitions

The FAA proposes to amend current definitions that are frequently used in the obstruction evaluation process and to add new terms in § 77.3. These new definitions are not currently defined in FAA documents, and some of the existing definitions currently in this subpart are no longer up-to-date with industry practices. A summary of these proposed definitions or amendments follows:

Public use airport. This term amends the previously defined term ''airport available for public use.'' The proposed definition describing the airport would be identical to the defined term ''Public use'' in 14 CFR part 157.

Electromagnetic effect. This term would define electromagnetic effect for determining its effect on navigation, communication, or surveillance signals to or from aircraft.

Nonprecision/precision instrument approach runway. These proposed definitions include approaches that use other than ground based navigational aids, such as flight management systems (FMS) and global navigation satellite systems (GNSS). These approaches provide azimuth and descent information, but because of equipment limitations, the visibility approach minimums are higher than approaches using a glide slope. Historically, nonprecision approaches were defined as approaches without descent information. Therefore, the FAA is proposing new definitions that use visibility minimums instead of descent capability. Because of technological advancements, the former definitions for nonprecision/precision instrument approach runways are no longer accurate.

Planned or proposed airport. This proposed term would explain which airports or planned airports the FAA takes into consideration during the aeronautical study process.

Utility runway. This term would be removed because it is no longer used and would be replaced with the phrase ''runway used by small aircraft.'' Small aircraft are defined in title 14 Code of Federal Regulations part 1 as aircraft with a maximum certificated takeoff weight of 12,500 pounds or less.

Visual runway. This proposed term would define a runway that is used by aircraft using visual maneuvers for landing or approach procedures that bring the pilot to a point where the pilot must complete the approach visually. Before these technological advances, pilots made approaches using visual means or by relying on ground based equipment. Pilots are now able to conduct approaches to airports that have no ground-based approach equipment by using a combination of visual references and flight management systems.

Requirement To File Notice With the FAA

Under current regulations, you must file notice with the FAA, via FAA Form 7460–1, at least 30 days before construction begins or the date you submit an application for any type of State or local government construction permit. The FAA is proposing to extend the period from 30 days to 60 days before either construction begins or the date that an application is submitted to state or local authorities for a permit,

whichever is earliest. The FAA's experience in processing notices and conducting aeronautical studies indicates that the 30-day period is too brief, and most notices require more than 30 days for study and processing.

To assess the impact of a proposed structure on the navigable airspace, the FAA must first determine whether the proposed structure is an obstruction under the regulations. If the structure is an obstruction, the FAA then identifies any adverse effects the proposed structure may have on the navigable airspace. This process often requires distribution of the proposal to the aviation community and State/local governments for additional information. If the FAA finds it necessary to solicit additional information, the agency provides 30 days for notified parties to submit comment. A problem arises for all concerned parties when the FAA cannot complete the aeronautical study until after the comment period closes. The 30-day period to provide the agency with notice of proposed construction or alteration does not allow the FAA adequate time to consider all comments received during the circularization process in a timely manner. Therefore, the FAA is proposing that notice must be filed 60 days before either the date that construction begins or the date you submit an application for any State or local government permit, whichever is earliest. This would facilitate the completion of aeronautical studies in a timely manner.

GOAA Decision

Under current regulations, obstruction standards are applied to an existing airport facility or a planned or proposed airport facility. These standards are also applied if a proposal for such an airport is ''on file'' with the FAA or with the appropriate military service on the date that FAA Form 7460 (for proposed construction/alteration) is filed with the FAA. If the FAA determines the proposed structure is an obstruction, we conduct an additional study to determine the proposed structure's effect on the safe and efficient use of the navigable airspace. Among other factors, the study includes consideration of the proposal's aeronautical effect on any existing or planned public use or military airports, air navigation facilities, procedures, or other proposal on file with the FAA or on file with an appropriate military service.

The decision in GOAA affects this long-standing FAA policy and practice as to the consideration given to plans on file with the FAA or with the appropriate military service. In the GOAA case, the court held the FAA must also consider the proposed structure's effect on other proposals received by the FAA before the end of the comment period of an aeronautical study of the proposed structure.

In considering this decision, the FAA notes that this case specifically addressed an aeronautical study that was circulated for comment. Most aeronautical studies are not circulated for comment because they do not exceed FAA obstruction standards. In GOAA, the court stated that ''the only way to determine what is the safest, most efficient use of airspace is to consider all proposals and comments received during the comment period.'' (939 F.2d, 954, at 962) The FAA believes the principle of the court's holding in GOAA should be applied not only to cases that are circulated for comment, but also to cases that are not circulated for comment. The FAA proposes to consider the aeronautical effect of proposed structures on planned or proposed airports for which the FAA has received actual notice prior to the issuance of an agency determination for that study.

Currently, in those cases where the agency receives actual notice of a planned or proposed airport but the comment period has closed, the agency does not consider the proposed structure in view of the planned or proposed airport. The FAA's proposed language goes beyond the decision in GOAA. The FAA believes the statutory mandate to determine the safest and most efficient use of the airspace should warrant consideration of any proposal for a planned or proposed airport that is filed with the FAA up to the date that determination is issued for that particular case. This latitude provides the FAA with the most up-to-date information in considering aeronautical effect, which results in the most accurate determination.

No Notice Required

The FAA proposes to remove § 77.15, Construction or Alteration Not Requiring Notice, and § 77.19, Acknowledgement of Notice. Currently § 77.15 notes certain proposed construction or alteration activities for which notice to the FAA is not required. These same exceptions to the notice requirement have been incorporated into proposed § 77.9, which explains those types of construction or alteration that require notice to be filed with the FAA. This change would place all information relevant to the filing of notices in one section of the rule and create easier access to information with less confusion.

The FAA also proposes removing § 77.19, Acknowledgement of Notice, from the rule. The information previously contained in this section would be contained in the new § 77.31.

Evaluating Aeronautical Effects

Subpart D of the current rule contains general provisions about aeronautical studies, and the relevant factors used in considering the impact of proposed construction or alteration in the navigable airspace. The FAA proposes to add a section entitled, Evaluating Aeronautical Effect, § 77.29, which incorporates the specific factors listed in Public Law 100–223 for consideration during an aeronautical study. While this specific language does not appear in the current regulations, the proposed inclusion of this language does not add or delete any factors currently considered in an aeronautical study. This proposal merely incorporates the statutory provisions into part 77 and provides the public with more specific information about the factors the FAA considers in determining the effect of a proposed construction or alteration on the navigable airspace.

EMI Notice Requirements

As previously stated, section 206 of Public Law 100–223 requires that aeronautical studies under part 77 consider whether proposed construction or alteration of structures could cause interference to air navigation, radio communication, and/or surveillance facilities or equipment, such as radar or an instrument landing system (ILS). It is evident by the legislative history of this statutory provision that Congress intended for the FAA to include EMI as a factor during aeronautical studies. H.R. 2310, which subsequently became Public Law 100–223, was amended in conference. Specifically, the conference substitute on Issue 54, Tall Towers, stated the following: ''Senate provisions, modified to clarify that requirements cover structures which create electromagnetic interference.'' Therefore, the FAA is proposing to require notice of new construction or alteration that may result in EMI to air navigation, radio communication, surveillance services, and facilities.

The FAA proposes to require that notice be filed for the following:

(1) Any construction of a new, or modification of an existing facility, *i.e.*—building, antenna structure, or any other man-made structure, which supports a radiating element(s) for the purpose of radio frequency transmission operating on the following frequencies:

(i) 54–108 MHz

(ii) 150–216 MHz

(iii) 406–420 MHz
(iv) 932–935/941 MHz
(v) 952–960 MHz
(vi) 1390–1400 MHz
(vii) 2500–2700 MHz
(viii) 3700–4200 MHz
(ix) 5000–5650 MHz
(x) 5925–6525 MHz
(xi) 7450–8550 MHz
(xii) 14.2–14.4 GHz
(xiii) 21.2–23.6 GHz

(2) Any changes or modifications to a system operating on one of the previously-mentioned frequencies, when specified in the original FAA determination, including:

(i) Change in the authorized frequency;

(ii) Addition of new frequencies;

(iii) Increase in effective radiated power (ERP) equal or greater than 3 decibels (db);

(iv) Modification of radiating elements such as:

(A) Antenna mounting location(s) if increased 100 feet or more, irrespective of whether the overall height is increased;

(B) Changes in antenna specifications (including gain, beam-width, polarization, pattern);

(C) Change in antenna azimuth/bearing (*e.g.*—point-to-point microwave systems).

Antenna towers that are used for radio broadcast services present a unique concern. FM band broadcast facilities use frequencies in the 88–108 MHz band. The FM band is immediately adjacent to the FAA's navigation/communications band (108–137 MHz) and uses a much greater transmitting power than the FAA Very High Frequency Omni-directional Range Station (VOR), ILS, or communications system. When EMI affects a VOR or ILS, inaccurate navigational guidance may result that is not apparent to the pilot. The navigational guidance may erroneously show that an aircraft is on course when in fact, it may be off course. In air-to-ground communications, EMI can cause pilots or air traffic controllers to miss vital flight communications transmissions.

Similarly, the VHF–TV bands (54–72 MHz, 76–88 MHz, and 174–216 MHz) are adjacent to or very close to frequencies used by FAA radio navigation bands for marker beacons (75 MHz), government land mobile facilities (162–174 MHz), and bands used for communication with the military air traffic (225–328.6 MHz). When EMI affects these bands, critical landing information may be lost, datalink communications of ground systems may become unreliable, and as stated before, pilots or air traffic controllers can miss vital flight communications.

Also, private land mobile radio services that use frequencies, 72–76 MHz, 150–174 MHz, and 406–420 MHz can create EMI. These frequencies either overlap or are adjacent to current frequencies that the FAA uses for radio navigation marker beacons (75 MHz), government land mobile facilities (162–174 MHz), and remote maintenance monitoring facilities (406.1–420 MHz). Also, public mobile services (*e.g.*—paging services) using frequencies in the 152–159 MHz band can affect government land mobile radio systems operating in 162–174 MHz. Although these services are not directly adjacent to the FAA's frequency allocations, harmful EMI can be caused by various spurious emissions and harmonics from the equipment. If EMI is introduced to these FAA facilities, a pilot may lose critical landing information, and datalink communications of ground systems may become unreliable. This could ultimately cause a facility to stop operating.

Moreover, public fixed radio services using frequencies 2500–2700 MHz operate in a frequency band adjacent to the FAA's authorized frequency band for terminal and weather radars (2700–3000 MHz). EMI could reduce the range of the radar to reliably detect targets or weather. EMI could also produce false targets or weather indications.

Likewise, fixed microwave services operating in frequency bands; 941–944 MHz, 952–960 MHz, 14.2–14.4 GHz, 21.2–23.6 GHz, require notification to the FAA. Wireless services in these bands operate frequencies that are either adjacent to or co-channel with the FAA's facilities operating on 941–944 MHz, 960–1215 MHz, 14.4–15.35 GHz, 21.2–23.6 GHz. EMI could cause degradation in voice or data signals used by other FAA facilities to communicate or provide navigational aid to pilots.

Wireless services operating in 1390–1400 MHz are adjacent to the FAA's radar band. EMI to these FAA facilities could reduce the range of the radar to reliably detect targets or weather. EMI could also produce false targets or weather indications.

Because some frequency changes could result in interference, the FAA proposes to require that notice must be filed for any changes of the authorized frequency by a proponent whose system operates a frequency in accordance with the frequencies previously listed in this section. Any increase in effective radiated power that exceeds 3 db is measurable and the additional interference generated may be significant. Thus, the FAA believes it is necessary to require that notice be filed for this type of change so it may be studied.

The FAA is also proposing to require sponsors of construction or alteration to notify the FAA when making modifications of radiating elements that operate a frequency in accordance with § 77.9 (e)(1)(i) through (xiii). Modifications of radiating elements include a height increase of 100 feet or more and modifications to the antenna specifications (including gain, beam-width, polarization, and pattern). Since an increase in the height of an antenna, gain, and beam-width of an antenna may expand the area of coverage, such a modification may impact FAA navigation and communication facilities that were not previously studied. However, it must be noted that under current regulations, an increase of antenna height, which also increases the overall height of antenna structure by more than 20 feet, irrespective of the antenna height increase, requires notice to be filed with the FAA. These proposed amendments do not change that requirement.

For example, FM antennas are made up of one to 14 sections that are placed on the tower in various configurations. The FAA has found that sometimes, when specifying the antenna configuration, EMI is reduced or eliminated. However, if there is a change to the antenna configuration, EMI may be created and may compromise critical components of the National Airspace System. Therefore, the FAA is proposing to require notice prior to making any change in the type of antenna when the antenna type has been specified in the original FAA determination.

The FAA requires notice of construction or modification to the antenna bearings/azimuths, especially those for microwave systems. The change in bearing/azimuth could potentially impact FAA facilities that were not considered during the initial study based on the initial parameters for the particular microwave system.

Although not required, for many years many private industry entities have been filing notices voluntarily with the FAA when constructing a new antenna tower. In addition, many companies have been voluntarily filing notices with the FAA when changing frequencies or frequency power which had already been studied by the FAA. This practice has allowed the FAA to study potential EMI effects and avoid potentially hazardous situations. The FAA does not believe these proposals would present a significant increase in the number of

notices filed since most private industry wireless providers already submit notices to the FAA. These proposals reflect a practice currently in place and used by most companies. We are proposing to require such notification for those few companies who have not already adopted this practice.

EMI—Obstruction Standards

Subpart C of part 77 contains the standards used in an aeronautical study to determine whether a structure is an obstruction to air navigation. If a structure exceeds any one of these standards, the FAA then conducts a further study to determine whether the structure is a hazard to air navigation. FAA Order 7400.2, Procedures for Handling Airspace Matters, articulates the primary methods for conducting aeronautical studies to ensure the safety of air navigation and the efficient use of the navigable airspace by aircraft. There are many varied demands placed on the use of navigable airspace. The FAA's objective is to provide for the efficient use of the national airspace system and protect air navigation facilities from either electromagnetic or physical encroachments that would preclude normal operations.

Currently, the FAA assumes a structure that exceeds one or more of the standards in part 77 is a hazard to air navigation unless the aeronautical study determines otherwise. An aeronautical study identifies the effect of the proposal on: (1) Existing and proposed public-use and military airports or aeronautical facilities; (2) existing and proposed VFR and IFR departure, arrivals and en route operations, procedures, and minimum flight altitudes; (3) any physical, electromagnetic or line-of-sight interference on existing or proposed air navigation communications, radar and control systems facilities; (4) airport capacity, as well as the cumulative impact resulting from the structure when combined with the impact of other existing or proposed structures; and (5) whether marking or lighting is necessary on the structure.

The FAA currently studies radiating elements and their effect on FAA navigational and communication facilities under the agency's authority in 49 U.S.C. 40103 and 40113. The standards used for classifying antenna structures as obstructions, as well as the specific policy on determining EMI, are found in Orders 7400.2, Procedures for Handling Airspace Matters, and Order 6050.32, Spectrum Management Regulations and Procedures Manual. The FAA is proposing to codify new EMI obstruction standards in part 77 along with the obstruction standards for physical obstructions.

For the same reasons stated in the section describing the frequencies for which the FAA proposes that notice be filed, the FAA proposes that any radiating element seeking to transmit in those exact same frequencies must be studied in order to determine whether potential interference exists to FAA navaids or communications systems. Transmitting in these frequencies, as discussed previously, may interfere with FAA navaids and communication systems that are adjacent to or very near these frequencies. Thus, the frequencies that would warrant notification to the FAA under this proposal are the same frequencies for which the FAA would categorize the transmitting facility as an obstruction and result in further aeronautical study.

During the aeronautical evaluation, the FAA will apply the policies and procedures in FAA Orders 7400.2 and 6050.32 to determine adverse effect. This proposal does not alter or affect any of these policies. The FAA has applied these policies since the late 1970s and will continue to do so with this proposal.

FAA-Approved Instrument Approach Procedures

Section 44718 of title 49 of the U.S.C., in part, provides that ''a person must give adequate public notice * * * when the notice will promote—(1) safety in air commerce; and (2) the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports.'' (49 U.S.C. 44718) Paragraph (b) requires that the FAA consider numerous ''factors relevant to the efficient and effective use of the navigable airspace, including * * * the impact on arrival, departure, and enroute procedures for aircraft operating under instrument flight rules.''

Certain instrument approach procedures (IAPs) have been developed and approved by the FAA for limited use by specific users. Often, specific equipment and training are required to conduct these approaches, so IAPs are available only to designated users. There has been an increase in the number of IAPs developed and approved by the FAA for use at private use airports and at heliports serving medical facilities. Notice of construction or alteration near a private use airport is not currently required under part 77. Consequently, the FAA may not be aware of proposed construction or alteration that may impact aircraft executing the IAP at that private use airport and could affect the safety of that operation.

In order for the FAA to properly assess the impact of proposed construction or alterations on any aircraft conducting an approach while operating under instrument flight rules (IFR), the FAA must consider proposed structures that would affect all FAA-approved IAPs, regardless of whether the procedure is at a public or private use airport. Therefore, the FAA is proposing to require that notice of construction or alteration on or near a private use airport or heliport must be filed with the FAA if that private use airport or heliport has at least one FAA-approved IAP. It is important to note the FAA is not requiring notice of proposed construction on or near all private airports; the FAA is only proposing that notice be filed for construction or alteration at or near a private use airport that has at least one FAA-approved IAP.

IAPs at private use airports or heliports are not currently listed in any aeronautical publication. The FAA proposes to post the private use airports and heliports with IAPs on the FAA's Obstruction Evaluation Web site. The FAA solicits comments about whether using the Web site for distribution of this information would be effective, and requests information about any other way the agency could distribute this information. If this proposal is adopted, sponsors of construction or alteration at or near a private use airport or heliport must consult the Web site to determine whether an FAA-approved IAP is listed for that airport. If the airport is listed on the Web site, the sponsor would be required to file a notice with the FAA.

The regulatory obstruction standards and agency policy for determining substantial adverse effect on aircraft instrument operations would apply similarly to proposed structures at or near private use airports and heliports that have at least one FAA approved IAP. The FAA notes that usually the number of aircraft operations at private use airports and heliports is minimal, and most proposed construction or alteration would not meet the criteria for a hazard determination. However, knowledge of proposed construction or alteration that exceeds the obstruction standards in § 77.17, which has an FAA-approved IAP, would give the FAA adequate time and opportunity to adjust the IAP, if warranted, and to distribute the information to those who use the IAP.

Obstruction Standards—Objects

Currently, part 77 states that a proposed or existing structure is an obstruction to air navigation if it is higher than 500 feet above ground level (AGL) at the site of the object. Therefore,

a structure that is proposed at a height of exactly 500 feet is not included and is not an obstruction.

The FAA is proposing to amend this obstruction standard to identify a proposed structure as an obstruction if it exceeds 499 feet. Navigable airspace is defined as the airspace above the minimum altitudes of flight prescribed by regulation, including airspace needed to ensure safety in the takeoff and landing of aircraft (49 U.S.C. 40102). FAA regulation governing minimum safe altitudes generally provides that aircraft may not be operated below 500 feet above the surface over non-congested areas. The minimum altitude is higher over congested areas. (*See* 14 CFR 91.119.) Under this proposed amendment, all structures that are 500 feet tall or more would be obstructions under part 77, and would be studied by the FAA to determine their effect on the navigable airspace. This proposal would ensure that all usable airspace at and above 500 feet AGL is addressed during the aeronautical study.

Civil Airport Imaginary Surfaces

The current § 77.25 describes civil airport runway imaginary surfaces, which are used to determine whether a proposed structure would be an obstruction to air navigation at civil airports. Presently, part 77 regulations describe five imaginary surfaces: (1) Horizontal surfaces; (2) conical surfaces; (3) primary surfaces; (4) approach surfaces; and (5) transitional surfaces. If a proposed structure penetrates any one of these imaginary surfaces, then the structure is an obstruction. The FAA then conducts an aeronautical study to determine whether the obstruction adversely affects a significant number of operations and therefore would be a hazard to navigation. The FAA proposes to amend certain imaginary surfaces, which would broaden their applicability. Changing these surfaces may result in more proposed structures being classified as obstructions, if the structure penetrates the surfaces. At the present time, the lateral dimensions of the imaginary surfaces do not encompass the same lateral airspace the FAA uses to establish instrument procedures. Because of this inconsistency in the dimensions of surface airspace, the FAA finds that certain structures do not fall within the surface area for an obstruction. Consequently, the FAA does not study them, but they may ultimately affect an instrument procedure. Amending the imaginary surfaces, as proposed here, would more closely align the imaginary surfaces under part 77 with the obstacle identification surfaces as defined in FAA Order 8260.3, United States Standard for Terminal Instrument Procedures (TERPS). While this may result in more structures classified as obstructions, it does not necessarily mean that more structures would, in fact, be hazards. These proposed amendments would provide the FAA with the ability to identify and study more structures to ensure the integrity of instrument procedures and to maintain traffic capacity.

Presently, the ''primary surface'' is longitudinally centered on the runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. Moreover, if a runway has a specially prepared hard surface (such as asphalt or concrete), the primary surface extends 200 feet beyond each end of that runway; if a runway has no specially prepared or planned hard surface, the primary surface ends at each end of that runway. Also, the width of the primary surface depends on the type of runway and the IAP serving the runway.

This action proposes to amend the description of the ''primary surface'' when there is an instrument approach procedure for that runway, irrespective of the type of runway surface. The basis for this proposal is that IAPs for runways that do not have a specially prepared hard surface are becoming more prevalent in remote areas of the country, such as parts of the western United States. For these runways, the FAA believes that it is necessary to amend the description of the primary surface to include the 200 feet extension beyond the end of the runway to accommodate the IAP. The FAA believes this amendment would help to keep the necessary clearance from obstacles at airports that have IAPs, but do not have specially prepared hard surfaces.

As previously stated, the term ''utility runway'' is no longer being used by the FAA. Therefore, the FAA is proposing to remove the term in current § 77.25 and replace it with the phrase, ''runways used by small aircraft.'' (Small aircraft, as defined in 14 CFR part 1, are aircraft with a maximum certificated takeoff weight of 12,500 pounds or less.)

In determining the width of the primary surface, the current regulation specifies different widths for ''utility runways'' and for ''other than utility runways.'' These two runway types are further categorized as visual approach, instrument approach with distinguishing flight visibility minimums, and day or night criteria. The FAA is proposing to remove the term ''utility runway'' and replace it with the phrase ''runways used by small aircraft.'' In addition, the FAA is proposing to use the following three categories of runway types in determining the primary surface width: (1) If the runway is visual, used by small aircraft, or restricted to day-only instrument operations, then the width of the primary surface would be 250 feet; (2) if the runway is visual or used by other than small aircraft during VFR-only operations or day/night instrument operations, then the primary surface width would be 500 feet; and (3) if the runway is a nonprecision or precision instrument runway, then the primary surface width would be 1,000 feet. By adopting these terms and categories, which are similar to the terms and categories used by the FAA in airport design documents, the rule setting forth the primary surface would be amended from five runway types to three runway types.

Also, the FAA proposes to reformat this section from text to a chart format. This would help readers find the requirements quickly and aid understanding. We solicit comments on whether this format clarifies the imaginary surface obstruction standards.

The FAA also proposes to amend the imaginary approach surface. Currently, the approach surface is defined as a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. The width of the approach surface currently ranges from 1,250 feet for utility runways with only visual approaches, to 16,000 feet for precision instrument runways. Also, the approach surface extends for a horizontal distance of 5,000 feet at a slope of 20 to 1 for visual runways, to more than 40,000 feet at a slope of 40 to 1 for all precision instrument runways. This action proposes to amend the approach surface description by adopting the same runway type descriptions previously discussed for the primary surfaces. Therefore, if the runway is a visual runway, or used by small aircraft during VFR operations, or restricted to day only instrument operations, the surface width would expand uniformly to 1,250 feet. If the runway is a visual runway, or used by other than small aircraft during VFR operations, or for day/night operations the surface width would expand uniformly to 3,500 feet. If the runway is a nonprecision instrument or precision instrument runway, the surface width would expand uniformly to 4,000 feet and 16,000 feet respectively.

The proposed amendments to runway type descriptions support instrument approach circle to land maneuvers. Generally, a circling approach maneuver is conducted when a straight-in landing to a runway is not possible due to winds, or in those cases when the approach is designed too steep for straight-in landing. The circling approach maneuver requires the pilot to visually acquire the airport environment and continue to the airport using visual references for landing. Pilots must see and avoid obstacles as they make the transition from relying on instrument navigation to visually flying the aircraft. This maneuver may be conducted with minimum flight visibility, which requires the area where the circling maneuver is conducted to be free from obstructions.

Other specific changes include removing approach surface widths of 1,500 feet (ft.) and 2,000 ft, and increasing the approach surface width for nonprecision runways from 2,000 ft. to 4,000 ft. These proposed widths are consistent with the slopes set forth in TERPS and provide for consistent application for instrument approach procedure development and obstacle clearance.

The FAA is proposing to amend the primary surface and the approach surface for several reasons. TERPS has expanded the requirements for obstruction clearance in the visual area of instrument approach procedures. This includes a new visual area assessment for runways where a pilot can circle to land from an instrument approach. The proposed changes to the airport imaginary surfaces support the more stringent TERPS requirements for visual area protection. Without these changes, an obstruction may be built without the benefit of an aeronautical study being conducted by the FAA to determine the impact on instrument operations and the navigable airspace.

These proposed changes would more closely align regulatory provisions in part 77 with TERPS criteria and airport design standards. The inconsistency between instrument approach procedure criteria, airport design standards, and part 77 is a source of confusion and frustration among both airport managers and the FAA. Currently, airport managers clear obstructions from the existing part 77 imaginary surfaces to support a flight operation only to find the instrument procedure criteria is more stringent than the current obstruction standards. Thus, the proposed IAP may be denied, which can result in unnecessary cost and delays, and the possible reduction in airport efficiency and capacity.

The FAA has been working for many years to bring about uniformity and consistency among criteria for airports, instrument approach procedures and obstructions. This proposal would amend the applicable sections of part 77 obstruction standards to more closely align with the standards that are currently used by the FAA in the airport design and TERPs for instrument procedures.

These specific proposals about surfaces do not change the notice requirements for proposed construction or alteration of existing structures. However, amending the runway imaginary surfaces (primary and approach surfaces), as discussed previously, may expand the number of structures that exceed the obstruction standards and require further study by the FAA to determine whether the structure is a hazard to air navigation. By studying more proposed obstructions that are in areas critical to aircraft takeoffs and landings, the FAA will increase its ability to maintain the integrity and safety of instrument approaches, as well as airport capacity and efficiency. It is important to note that exceeding part 77 obstruction standards alone does not necessarily identify a structure as a hazard until further study is conducted.

Antenna Farms

The current subpart F describes the scope, policy, and general provisions for the establishment of antenna farms. An antenna farm is an area in which antenna structures may be grouped to localize their effect on the use of the navigable airspace. The current regulatory provision for the establishment of antenna farm areas has never been used, nor has the need to designate antenna farms been demonstrated. During this rulemaking action, the FAA consulted with the FCC about this specific proposal. The FCC, who also has authority to propose an antenna farm under this part, has no objection to removing this section. Therefore, the FAA is proposing to delete subpart F.

Extension to a Determination of No Hazard

The current rule provides that the effective period of a ''Determination of No Hazard'' (unless subject to an appropriate construction permit from the Federal Communications Commission) expires 18 months after its effective date unless it is otherwise extended, revised, or terminated. The current rule also allows the sponsor of construction to request an extension of the expiration date from the FAA official who issued the Determination of No Hazard. The current rule contains no provision for the period for which an extension may be granted, and generally it is extended for however long the FAA official deems appropriate.

The FAA considers the proposed structure when creating or amending flight procedures or air traffic operations in the area. In effect, the airspace is reserved for the structure until the FAA is advised otherwise. Currently, when the FCC grants an extension to a construction permit, the FAA determination is automatically extended. However, there have been cases in the past where air traffic operations or flight procedures have been delayed or adjusted for years to accommodate a proposed structure that was never actually built. For this reason, the FAA is proposing to allow, upon request, a one-time extension of a no-hazard determination for up to 18 months for a structure that is not subject to FCC review. If a proponent requires a longer time period, a new Form 7460 (Notice of Proposed Construction or Alteration) must be submitted to the FAA to restudy the proposed structure.

The FAA believes that for structures not subject to FCC review, the extension of a Determination of No Hazard should be limited to a maximum of 18 months. If more than 18 months would be necessary, then a new aeronautical study would be initiated. We believe that this proposal would result in more efficient use of airspace and provide the FAA with more flexibility when adopting new flight procedures or air traffic operations.

The current rule also provides that if the proposed construction cannot be started before the FCC issues an appropriate construction permit, the effective period of a Determination of No Hazard includes: (1) The time required to apply for a construction permit from the FCC, but not more than 6 months after the effective date of the Determination of No Hazard; and (2) the time needed for the FCC to process the application, except in cases where the FAA determines that a shorter period is warranted by the circumstances. When the FCC issues an appropriate construction permit, the Determination of No Hazard is effective until the date prescribed in the FCC permit for completion of the construction. If the FCC refuses to issue a permit, the final determination expires on the date of the FCC's refusal.

The FAA proposes that for structures subject to an appropriate FCC construction permit, a Determination of No Hazard may be extended for 12 months, provided the sponsor has

submitted evidence that an application for a construction permit was filed and that additional time is needed because of FCC requirements. If the FCC extends the original FCC construction completion date, an extension of the FAA Determination of No Hazard must be requested by the sponsor from the issuing FAA regional office.

Effective Period of Determinations

The current rule contains a section that addresses the effective period of a determination. Information about a determination's effective date is contained in the actual determination issued to the sponsor, but this information is not included in the regulations. The FAA proposes to include a regulatory provision that provides for a determination to become effective 40 days after the date of issuance, unless a petition for discretionary review is filed and received by the FAA within 30 days of the date of issuance. This would provide information about proposed structures to the general public who may have an interest in proposed construction or alteration projects.

Petitions for Discretionary Review

Currently, sponsors or persons who have a substantial aeronautical objection to an issued determination, or persons who were not given an opportunity to comment during the aeronautical study process, may petition the FAA for discretionary review. The FAA is proposing to include information about processing petitions for discretionary review to simplify and clarify the process. This proposal codifies current policies and practices but does not alter the petition process. In addition, the FAA is proposing to clarify that, if the last day of the 30-day filing period falls on a weekend or a day the Federal Government is closed, the last day of the filing period would be the next business day that the Federal Government is open.

The current rule excludes from the discretionary review process an FAA determination that a structure does not exceed obstruction standards. The FAA proposes to also exclude from the discretionary review process ''No Hazard determinations'' issued for temporary structures and recommendations for marking and lighting. Because of the nature of temporary structures, it is not feasible to apply the discretionary review process to these structures. Additionally, since marking and lighting recommendations are simply recommendations, there is a separate process in Advisory Circular (AC) 70/7460–1J, Obstruction Marking and Lighting, which provides procedures for a waiver of, or deviation from, the recommendations. The FAA does not find it necessary to extend the discretionary review process to these determinations.

Public Hearings

The current subpart E lists the rules of practice for a public hearing about a proposed construction or alteration of a structure. The purpose of the public hearing as cited in this section is fact finding and non-adversarial in nature.

The hearing procedures cited in subpart E have not been used in recent years since petitioners are given ample opportunity to submit all the material they believe is necessary to support their positions. Further, the courts have upheld a review process exclusively based on the submission of written materials by the petitioner. Therefore, the FAA is proposing to delete current subpart E in its entirety.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Safe, Efficient Use and Preservation of the Navigable Airspace.

Summary: The FAA proposes to amend the regulations governing objects that may affect the navigable airspace. Specifically, the FAA is proposing to add notification requirements and obstruction standards for electromagnetic interference and amend the obstruction standards for civil airport imaginary surfaces to more closely align these standards with FAA airport design and instrument approach procedure criteria. The FAA proposes to require proponents to file with the agency a notice of proposed construction or alteration of structures near private-use airports that have an FAA approved instrument approach procedure. This proposal, if adopted, would also increase the number of days in which a notice must be filed with the FAA before beginning construction or alteration; add and amend definitions for terms commonly used during the aeronautical evaluation process; and remove the provisions for public hearings and antenna farms. Lastly, the FAA proposes to retitle the rule and reformat it into sections that closely reflect the aeronautical study process. These proposals incorporate case law and legislative action, and simplify the rule language. The intended effect of these proposed changes is to improve safety and promote the efficient use of the National Airspace System.

Use of: The FAA uses the information collected to determine the effect the proposed construction or alteration would have on air navigation by analyzing the physical and/or electromagnetic effect that the structure would have on air navigation procedures, air navigation and/or communication facilities. The following factors are considered:

- The impact on arrival, departure, and en route procedures for aircraft visual and instrument flight rules.
- The impact on existing and planned public-use airports and aeronautical facilities.
- The cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures.

Without collection of this information, safety of air navigation cannot be ensured.

Respondents (including number of): The FAA estimates that there will be 26,794 respondents to this proposed information requirement. Respondents include individuals, small businesses, and large corporations.

Frequency: The FAA estimates respondents will file notices on occasion.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows:

Requirement	Forms to be filled out	Time (hours)	Cost
FAA Form 7460–1	3,824	1,223.68	$1,368,905
P.L. 100–23	22,970	7,350.40	6,224,870
Total	26,794	8,574.08	7,593,775

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by August 11, 2006, and should direct them to the address listed in the **ADDRESSES** section of this document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no new differences with these proposed regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its additional costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

Total Costs and Benefits of This Rulemaking

The FAA estimates the cost to private industry would be approximately $13.7 million ($8.8 million, discounted) over the next 10 years. The estimated cost of the proposed rule to the FAA would be approximately $19.9 million ($12.8 million, discounted) over the next 10 years. Therefore, over the next 10 years, the total cost associated with the proposed rule would be approximately $33.6 million ($21.5 million, discounted).

There are two main qualitative safety benefits of the proposed rule. First, this proposal would enhance the protection of air navigation aids in the vicinity of private use airports with FAA-approved instrument approach procedures. Second, the proposed rule would protect the flying public from signal interference from broadcast sources that could disrupt vital communication or alter the performance of vital avionics.

Who Is Potentially Affected by This Rulemaking?

This proposed rulemaking affects anyone who is proposing to construct a transmitting structure, who would construct a transmitting structure, or who would alter an existing transmitting structure (*i.e.* television operators, radio stations, cellular phone providers). This rulemaking may also affect individuals or corporations proposing construction because obstruction standards modified by this rule could result in more structures determined to be obstructions.

Our Cost Assumptions and Sources of Information

Discount rate—7%
Period of Analysis 2006—2015
Monetary values expressed in 2004 dollars
Cost for an individual to file an OE notice or an EMI notice—$10
Cost for a consulting firm to file an OE notice or an EMI notice—$445
Cost for the FAA to review and process an OE notice or an EMI notice—$520

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

With regards to the impact of the proposed EMI requirements on small entities, as stated earlier, the FAA is proposing these requirements in compliance with Public Law 100–223, Section 206. Accordingly, the cost associated with filing EMI notices would be attributed to the Act, and not to the proposed rule.

While the FAA does not maintain data on the size of businesses that file notices, the FAA estimates that approximated forty percent [1] of the OE notices would be filed by small business (comprised of business owners and private-use airport owners) as defined by the Small Business Administration. Consequently, in 2006 when the rule is expected to take effect, the FAA expects approximately 3,140 OE notices would

[1] This estimate is based on FAA expert opinion.

be filed. Of those applications filed, approximately 1,260 OE notices are estimated to be filed by small businesses (using 40 percent assumption).

For those small businesses that are inexperienced in submitting the necessary paperwork, the FAA believes they would either hire a consultant or spend as much as the consultant fee ($445) in staff time to understand, research, complete, and submit the form(s). For the purpose of this regulatory flexibility assessment, the FAA assumes that it would cost all small entities approximately $445 per case to meet the proposed requirements of part 77.

The FAA believes that any individual small business is unlikely to submit enough OE notices in a calendar year that would cost them more than $1,500 (three notices including consultant fees would cost approximately $1,335). The FAA does not consider $1,500 a year a significant cost. Therefore, the Administrator of the Federal Aviation Administration certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination and requests that all comments be accompanied by clear documentation.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $ 128.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 77

Administrative practice and procedure, Airports, Airspace, Aviation safety, Navigation (air), Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations, by revising part 77 to read as follows:

PART 77—SAFE, EFFICIENT USE, AND PRESERVATION OF THE NAVIGABLE AIRSPACE

Subpart A—General

Sec.
77.1 Purpose.
77.3 Definitions.

Subpart B—Notice Requirements

77.5 Applicability.
77.7 Form and time of notice.
77.9 Construction or alteration requiring notice.
77.11 Supplemental notice requirements.

Subpart C—Standards for Determining Obstructions to Air Navigation or Navigational Aids or Facilities

77.13 Applicability.
77.15 Scope.
77.17 Obstruction standards.
77.19 Civil airport imaginary surfaces.
77.21 Department of Defense (DoD) airport imaginary surfaces.
77.23 Heliport imaginary surfaces.

Subpart D—Aeronautical Studies and Determinations

77.25 Applicability.
77.27 Initiation of studies.
77.29 Evaluating aeronautical effect.
77.31 Determinations.
77.33 Effective period of determinations.
77.35 Extensions, terminations, revisions and corrections.

Subpart E—Petitions for Discretionary Review

77.37 General.
77.39 Contents of a petition.
77.41 Discretionary review results.

Authority: 49 U.S.C. 106(g), 40103, 40113–40114, 44502, 44701, 44718, 46101–46102, 46104.

Subpart A—General

§ 77.1 Purpose.

This part establishes:

(a) The requirements to provide notice to the FAA of certain proposed construction, or the alteration of existing structures;

(b) The standards used to determine obstructions to air navigation and navigational and communication facilities;

(c) The process for aeronautical studies of obstructions to air navigation or navigational facilities to determine the effect on the safe and efficient use of navigable airspace, air navigation facilities or equipment; and

(d) The process to petition the FAA for discretionary review of determinations, revisions, and extensions of determinations.

§ 77.3 Definitions.

For the purpose of this part:

(a) *Electromagnetic effect* is any interference or impediment to the transmission or quality of navigation or communication signals to or from aircraft, meteorological equipment, navigation equipment, communications equipment, or air traffic control facilities caused by a power source, radio frequency transmitter, or an object or surface that emits, reflects, or re-radiates an electromagnetic signal or electrical pulse.

(b) *Nonprecision instrument runway* is:

(1) Any runway that has an instrument approach procedure that meets straight-in alignment criteria with visibility minimums of ¾ mile, up to and including one mile; or

(2) Any runway for which an instrument approach procedure is designated or planned that meets straight-in alignment criteria with visibility minimums of ¾ mile, up to and including one mile. This runway must be included in an FAA or DoD approved airport layout plan, or an airport planning document.

(c) *Planned or proposed airport* is an airport that is the subject of at least one of the following documents received by the FAA:

(1) Airport proposals submitted under 14 CFR part 157.

(2) Airport Improvement Program requests for aid.

(3) Notices of existing airports where prior notice of the airport construction or alteration was not provided as required by 14 CFR part 157.

(4) Airport layout plans.

(5) DoD proposals for airports used only by the U.S. Armed Forces.

(6) DoD proposals on joint-use (civil-military) airports.

(7) Completed airport site selection feasibility study.

(d) *Precision instrument runway* is:

(1) Any runway that has an instrument approach procedure with visibility minimums of less than ¾ mile; or

(2) Any runway for which an instrument approach procedure has been designated or planned that has visibility minimums of less than ¾ mile. This runway must be included in an FAA or DoD approved airport layout plan, or airport planning document.

(e) *Public use airport* is an airport available for use by the general public without a requirement for prior approval of the airport owner or operator.

(f) *Seaplane base* is considered to be an airport only if its sea lanes are outlined by visual markers.

(g) *Visual runway* is a runway for the operation of aircraft using visual maneuvers for landing, or with instrument approach procedure visibility minimums more than one mile (including circling procedures and those annotated ''proceed visually).'' This does not including procedures annotated ''proceed VFR'', or with no instrument designation indicated on an FAA approved airport layout plan, a DoD approved military airport layout plan, or by any official planning document submitted to the FAA.

Subpart B—Notice Requirements

§ 77.5 Applicability.

(a) If you propose any construction or alteration described in § 77.9, you must provide adequate notice to the FAA of that construction or alteration.

(b) If requested by the FAA, you must also file supplemental notice before the start date and upon completion of certain construction or alterations that are described in § 77.9.

(c) Notice received by the FAA under this subpart is used to:

(1) Evaluate the effect of the proposed construction or alteration on safety in air commerce and the efficient use and preservation of the navigable airspace and of airport traffic capacity at public use airports;

(2) Determine whether the effect of proposed construction or alteration is a hazard to air navigation;

(3) Determine appropriate marking and lighting recommendations using FAA Advisory Circular 70/7460–1, Obstruction Marking and Lighting;

(4) Determine other appropriate measures to be applied for continued safety of air navigation;

(5) Notify the aviation community of the construction or alteration of objects that affect the navigable airspace, including the revision of charts, when necessary.

§ 77.7 Form and time of notice.

(a) If you are required to file notice under § 77.9, you must submit to the FAA a completed FAA Form 7460–1, Notice of Proposed Construction or Alteration. FAA Form 7460–1 is available at FAA regional offices and on the FAA Web site.

(b) You must submit this form at least 60 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest.

(c) If you propose construction or alteration that is also subject to the licensing requirements of the Federal Communications Commission (FCC), you must submit notice to the FAA on or before the date that the application is filed with the FCC.

(d) If you propose construction or alteration to an existing structure and it exceeds 2,000 ft. in height above the ground (AGL), the FAA presumes it to be a hazard to air navigation that results in an inefficient use of airspace. You must include details explaining both why the proposal would not constitute a hazard to air navigation and why it would not cause an inefficient use of airspace.

(e) The 60-day advance notice requirement is waived if immediate construction or alteration is required because of an emergency involving essential public services, public health, or public safety. You may provide notice to the FAA by any available expeditious means. You must file a completed FAA Form 7460–1 within 5 days of the initial notice to the FAA. Outside normal business hours, the nearest FAA flight service station will accept emergency notices.

§ 77.9 Construction or alteration requiring notice.

If requested by the FAA, or if you propose any of the following types of construction or alteration, you must file notice with the FAA of:

(a) Any construction or alteration that is more than 200 ft. AGL at its site.

(b) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(1) 100 to 1 for a horizontal distance of 20,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 3,200 ft. in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 10,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this

section with its longest runway no more than 3,200 ft. in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 5,000 ft. from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

(c) Any construction or alteration of a highway, railroad, or other traverse way for mobile objects, of a height that would exceed a standard of paragraph (a) or (b) of this section provided the following:

If the traverse way is a(n) . . .	Then increase the surface height by . . .
(1) Interstate Highway	(i) 17 feet.
(2) Other Public Roadway	(i) 15 feet.
(3) Private Road	(i) 10 feet, or height of highest object which uses the road.
(4) Waterway, or other traverse way	(i) The height equal to an object that uses it.
(5) Railroad	(i) 23 feet.

(d) Any construction or alteration on any of the following airports and heliports:

(1) A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the DoD.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

(e) Frequencies.

(1) Any construction of a new facility, or modification of an existing acility, which supports a radiating element(s) for the purpose of radio frequency transmission operating on the following frequencies:

(i) 54–108 MHz
(ii) 150–216 MHz
(iii) 406–420 MHz
(iv) 932—935/941 MHz
(v) 952–960 MHz
(vi) 1390–1400 MHz
(vii) 2500–2700 MHz
(viii) 3700–4200 MHz
(ix) 5000–5650 MHz
(x) 5925–6525 MHz
(xi) 7450–8550 MHz
(xii) 14.2–14.4 GHz
(xiii) 21.2–23.6 GHz

(2) Any changes or modifications to a system operating on a frequency specified in paragraphs (e)(1)(i) through (xiii) of this section, when specified in the original FAA determination, including:

(i) Change in the authorized frequency;

(ii) Addition of new frequencies;

(iii) Increase in effective radiated power (ERP) equal or greater than 3 decibels (db);

(iv) Modification of radiating elements, including:

(A) Antenna mounting location(s) if increased 100 feet or more, irrespective of whether the overall height is increased;

(B) Changes in antenna specifications (including gain, beam-width, polarization, pattern);

(C) Change in antenna azimuth/bearing (e.g. point-to-point microwave systems).

(f) You do not need to file notice for construction or alteration of:

(1) Any object, not having potential electromagnetic effect, that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any construction or alteration for which notice is required by any other FAA regulation.

(4) Any antenna structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

§ 77.11 Supplemental notice requirements.

(a) You must file supplemental notice with the FAA when:

(1) The construction or alteration is more than 200 feet in height AGL at its site; or

(2) Requested by the FAA.

(b) You must file supplemental notice on a prescribed FAA form to be received within the time limits specified in the FAA determination. If no time limit has been specified, you must submit supplemental notice of construction to the FAA within 5 days after the structure reaches its greatest height.

(c) If you abandon a construction or alteration proposal that requires supplemental notice, you must submit notice to the FAA within 5 days after the project is abandoned.

(d) If the construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

Subpart C—Standards for Determining Obstructions to Air Navigation or Navigational Aids or Facilities

§ 77.13 Applicability.

This subpart describes the standards used for determining obstructions to air navigation, navigational aids, or navigational facilities. These standards apply to the following:

(a) Any object of natural growth, terrain, or permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus.

(b) The alteration of any permanent or temporary existing structure by a change in its height, including appurtenances, or lateral dimensions, including equipment or material used therein.

§ 77.15 Scope.

(a) This subpart describes standards used to determine obstructions to air navigation that may affect the safe and efficient use of navigable airspace and the operation of planned or existing air navigation and communication facilities. Such facilities include air navigation aids, communication equipment, airports, Federal airways, instrument approach or departure procedures, and approved off-airway routes.

(b) Objects that are considered obstructions under the standards described in this subpart are presumed hazards to air navigation unless further aeronautical study concludes that the object is not a hazard. Once further aeronautical study has been initiated, the FAA will use the standards in this subpart, along with FAA policy and guidance material, to determine if the object is a hazard to air navigation.

(c) The FAA will apply these standards with reference to an existing airport facility, and airport proposals received by the FAA, or the appropriate

military service, before it issues a final determination.

(d) For airports having defined runways with specially prepared hard surfaces, or runways supporting an approach with visibility less than one mile, or night instrument operations, the primary surface for each runway extends 200 feet beyond each end of the runway. For airports having defined strips or pathways used regularly for aircraft takeoffs and landings, and designated runways, without specially prepared hard surfaces, each end of the primary surface for each such runway shall coincide with the corresponding end of the runway. At airports, excluding seaplane bases, having a defined landing and takeoff area with no defined pathways for aircraft takeoffs and landings, a determination must be made as to which portions of the landing and takeoff area are regularly used as landing and takeoff pathways. Those determined pathways must be considered runways, and an appropriate primary surface as defined in § 77.19 will be considered as longitudinally centered on each such runway. Each end of that primary surface must coincide with the corresponding end of that runway.

(e) The standards in this subpart apply to construction or alteration proposals on an airport (including heliports and seaplane bases with marked lanes) if that airport is one of the following before the issuance of the final determination:

(1) Available for public use and is listed in the Airport/Facility Directory, Supplement Alaska, or Supplement Pacific of the U.S. Government Flight Information Publications; or

(2) A planned or proposed airport or an airport under construction of which the FAA has received actual notice, except DoD airports, where there is a clear indication the airport will be available for public use; or,

(3) An airport operated by a Federal agency or the DoD; or,

(4) An airport that has at least one FAA approved instrument approach.

§ 77.17 Obstruction standards.

(a) Proposed and Existing Structures

(1) An object, including a mobile object, is an obstruction to air navigation if it is higher than any of the following heights or surfaces:

(i) 499 feet AGL at the site of the object.

(ii) 200 feet AGL, or above the established airport elevation (AE), whichever is higher, within 3 nautical miles of the established airport reference point, excluding heliports, with its longest runway more than 3,200 feet in actual length, and that height increases in the proportion of 100 feet for each additional nautical mile from the airport up to a maximum of 499 feet above AE.

(iii) A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, which would result in the vertical distance between any point on the object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.

(iv) A height within an en route obstacle clearance area of a Federal Airway or approved off-airway route that would require an increase of an existing or planned minimum obstacle clearance altitude; or a height that would impact National Airspace System efficiency, such as raising the minimum instrument altitude;

(v) The surface of a takeoff and landing area of an airport or any imaginary surface established under § 77.17, 77.19, 77.21, or 77.23. However, no part of the takeoff or landing area itself will be considered an obstruction.

(2) Except for traverse ways on or near an airport with an operative ground traffic control service furnished by an airport traffic control tower or by the airport management and coordinated with the ATC service, a traverse way used or to be used for the passage of mobile objects will be considered, for purposes of paragraph (a) of this section, to be an object of a height equal to the elevation of the traverse way increased by the following:

If the traverse way is a(n) . . .	Then increase the surface height by . . .
(i) Interstate Highway	(A) 17 feet.
(ii) Other Public Roadway	(A) 15 feet.
(iii) Private Road	(A) 10 feet, or height of highest mobile object which uses the road.
(iv) Waterway, or other traverse way	(A) The height equal to an object that uses it.
(v) Railroad	(A) 23 feet.

(b) Electromagnetic Interference (EMI)—A proposed radiating facility is considered an obstruction if it is within the frequency bands identified in § 77.9(e).

§ 77.19 Civil airport imaginary surfaces.

(a) *General.* The civil airport imaginary surfaces in this section are established in relation to the airport and to each runway, and used to identify objects that may affect airport plans and arrival or departure procedures. In many cases, the imaginary surfaces are lower than required aircraft operational surfaces to identify obstructions that are potential hazards to air navigation. The dimension of each imaginary surface is based on the category of each runway and the type of approach procedure available or planned for that runway. The slope and dimensions of the surface are applied to both ends of a runway and are determined by the most precise approach procedure (existing or planned) for that runway.

(b) *Horizontal surface.* A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of a specified radii from the center of each end of the primary surface for each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

(1) 5,000 feet for all runways designated as visual or serving only small aircraft.

(2) 10,000 feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc must be disregarded on the construction of the perimeter of the horizontal surface.

(c) *Conical surface.* A surface extending outward and upward from the perimeter of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

(d) *Primary surface.* A surface longitudinally centered on a runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. When the runway has a specially prepared hard surface, or supports an approach with visibility less than one mile, or night instrument operations, the primary surface extends 200 feet beyond each end of that runway. When the runway has no

specially prepared hard surface or planned hard surface, or has no FAA-approved Instrument Approach Procedure, or the sea lanes of a seaplane base are outlined by visual markers, the primary surface ends at each end of the runway. The width of the primary surface is included in the following table:

If the runway is . . .	Then the width must be . . .
(1) Visual, or used only by small aircraft during VFR operations, or restricted to day-only instrument operations.	(i) 250 feet.
(2) Visual, or used by other than small aircraft during VFR-only operations, or day/night instrument operations.	(i) 500 feet.
(3) Nonprecision instrument runway, or precision instrument (i) runway	(i) 1,000 feet.

(e) *Approach surface.* A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

(1) The inner edge of the approach surface is the same width as the primary surface and:

If the runway is . . .	The surface width expands uniformly to . . .
(i) Visual, or used only by small aircraft during VFR operations, or restricted to day-only instrument operations.	(A) 1,250 feet.
(ii) Visual, or used by other than small aircraft during VFRfeet. operations, or day/night instrument operations.	(A) 3,500.
(iii) Nonprecision Instrument	(A) 4,000 feet.
(iv) Precision Instrument	(A) 16,000 feet.

(2) Approach surface horizontal distance:

If the runway is . . .	Extend the surface distance to . . .	At a slope of . . .
(i) Visual, or used by small aircraft during VFR operations, or during day-only instrument operations.	(A) 5,000 feet	(*1*) 20:1.
(ii) Visual, or used by other than small aircraft during VFR operations, or day/night instrument operations, or Nonprecision Instrument.	(A) 10,000 feet	(*1*) 34:1.
(iii) Precision Instrument	(A) 10,000 feet, then an additional 40,000 feet.	(*1*) 50:1; at 40:1.

(3) The outer width of the approach surface to an end of a runway will be the width prescribed in this section for the most precise procedure existing or planned for that runway end.

(d) *Transitional surface.* These surfaces extend outward and upward at right angles to the runway centerline and the extended runway centerline at a slope of 7 to 1 from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of a precision approach surface that project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

§ 77.21 Department of Defense (DoD) airport imaginary surfaces.

(a) *Related to airport reference points.* These surfaces apply to all military airports. For the purposes of this section, a military airport is any airport operated by the DoD.

(1) *Inner horizontal surface.* A plane that is oval in shape at a height of 150 feet above the established airfield elevation. The plane is constructed by scribing an arc with a radius of 7,500 feet about the centerline at the end of each runway and interconnecting these arcs with tangents.

(2) *Conical surface.* A surface extending from the periphery of the inner horizontal surface outward and upward at a slope of 20 to 1 for a horizontal distance of 7,000 feet to a height of 500 feet above the established airfield elevation.

(3) *Outer horizontal surface.* A plane, located 500 feet above the established airfield elevation, extending outward from the outer periphery of the conical surface for a horizontal distance of 30,000 feet.

(b) *Related to runways.* These surfaces apply to all military airports.

(1) *Primary surface.* A surface located on the ground or water longitudinally centered on each runway with the same length as the runway. The width of the primary surface for runways is 2,000 feet. However, at established bases where substantial construction has taken place in accordance with a previous lateral clearance criteria, the 2,000-foot width may be reduced to the former criteria.

(2) *Clear zone surface.* A surface located on the ground or water at each end of the primary surface, with a length of 1,000 feet and the same width as the primary surface.

(3) *Approach clearance surface.* An inclined plane, symmetrical about the runway centerline extended, beginning 200 feet beyond each end of the primary surface at the centerline elevation of the runway end and extending for 50,000 feet. The slope of the approach clearance surface is 50 to 1 along the runway centerline extended until it reaches an elevation of 500 feet above the established airport elevation. It then continues horizontally at this elevation to a point 50,000 feet from the point of beginning. The width of this surface at the runway end is the same as the

primary surface, it flares uniformly, and the width at 50,000 is 16,000 feet.

(4) *Transitional surfaces.* These surfaces connect the primary surfaces, the first 200 feet of the clear zone surfaces, and the approach clearance surfaces to the inner horizontal surface, conical surface, outer horizontal surface or other transitional surfaces. The slope of the transitional surface is 7 to 1 outward and upward at right angles to the runway centerline.

§ 77.23 Heliport imaginary surfaces.

(a) *Primary surface.* The area of the primary surface coincides in size and shape with the designated take-off and landing area. This surface is a horizontal plane at the elevation of the established heliport elevation.

(b) *Approach surface.* The approach surface begins at each end of the heliport primary surface with the same width as the primary surface, and extends outward and upward for a horizontal distance of 4,000 feet where its width is 500 feet. The slope of the approach surface is 8 to 1 for civil heliports and 10 to 1 for military heliports.

(c) *Transitional surfaces.* These surfaces extend outward and upward from the lateral boundaries of the primary surface and from the approach surfaces at a slope of 2 to 1 for a distance of 250 feet measured horizontally from the centerline of the primary and approach surfaces.

Subpart D—Aeronautical Studies and Determinations

§ 77.25 Applicability.

(a) This subpart applies to any aeronautical study of a proposed construction or alteration for which notice to the FAA is required under § 77.9.

(b) The purpose of an aeronautical study is to determine whether the aeronautical effects of the specific proposal and, where appropriate, the cumulative impact resulting from the proposed construction or alteration when combined with the effects of other existing or proposed structures, would constitute a hazard to air navigation.

(c) The obstruction standards in subpart C of this part are supplemented by other manuals and directives used in determining the effect on the navigable airspace of a proposed construction or alteration. When the FAA needs additional information, it may circulate a study to interested parties for comment.

§ 77.27 Initiation of studies.

The FAA will conduct an aeronautical study when:

(a) Requested by the sponsor of any proposed construction or alteration for which a notice is submitted; or

(b) The FAA determines a study is necessary.

§ 77.29 Evaluating aeronautical effect.

(a) The FAA conducts an aeronautical study to determine the impact of a proposed or existing structure or alteration on aeronautical operations, procedures, and the safety of flight. These include an evaluation of:

(1) The impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

(2) The impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

(3) The impact on existing and planned public use airports;

(4) Airport capacity of existing public use airports and public use airport development plans received before the issuance of the final determination;

(5) Minimum obstacle clearance altitudes, minimum instrument flight rules altitudes, approved or planned instrument approach procedures, and departure procedures;

(6) The potential effect on ATC radar, direction finders, ATC tower line-of-sight visibility, and physical or EMI effects on air navigation and communication facilities;

(7) The aeronautical effects resulting from the cumulative impact of a proposed construction or alteration of a structure when combined with the effects of other existing or proposed structures.

(b) If you withdraw the proposed construction or alteration or revise it so that it is no longer identified as an obstruction, or if no further aeronautical study is necessary, the FAA may terminate the study.

§ 77.31 Determinations.

(a) The FAA will issue a determination stating whether the proposed construction or alteration would be a hazard to air navigation, and will advise all known interested persons.

(b) The FAA will make determinations based on the aeronautical study findings and will identify the following:

(1) The effects of the proposed or existing structure on VFR/IFR aeronautical departure/arrival operations, air traffic procedures, minimum flight altitudes, and existing planned or proposed airports listed in § 77.15(e) of which the FAA has received actual notice prior to issuance of a final determination.

(2) The extent of the physical and/or EMI effect on the operation of existing or proposed air navigation facilities or communication aids.

(c) The FAA will issue a Determination of Hazard to Air Navigation when the aeronautical study concludes that the proposed construction or alteration will exceed an obstruction standard and would have a substantial aeronautical impact.

(d) A Determination of No Hazard to Air Navigation will be issued when the aeronautical study concludes that the proposed construction or alteration will exceed an obstruction standard but would not have a substantial aeronautical impact to air navigation. A Determination of No Hazard to Air Navigation may include the following:

(1) Conditional provisions of a determination.

(2) Limitations necessary to minimize potential problems, such as the use of temporary construction equipment.

(3) Supplemental notice requirements, when required.

(4) Marking and lighting recommendations, as appropriate.

(e) The FAA will issue a Determination of No Hazard to Air Navigation when a proposed structure does not exceed any of the obstruction standards and would not be a hazard to air navigation.

§ 77.33 Effective period of determinations.

(a) A determination issued under this subpart is effective 40 days after the date of issuance, unless a petition for discretionary review is received by the FAA within 30 days after issuance. The determination will not become final pending disposition of a petition for discretionary review.

(b) Unless extended, revised, or terminated, each Determination of No Hazard to Air Navigation issued under this subpart expires 18 months after the effective date of the determination, or on the date the proposed construction or alteration is abandoned, whichever is earlier.

(c) A Determination of Hazard to Air Navigation has no expiration date.

§ 77.35 Extensions, terminations, revisions and corrections.

(a) You may petition the FAA official who issued the Determination of No Hazard to Air Navigation to revise or reconsider the determination based on new facts or to extend the effective period of the determination, provided that:

(1) Actual structural work of the proposed construction or alteration, such as the laying of a foundation, but not including excavation, has not been started; and

(2) The petition is submitted at least 15 days before the expiration date of the

Determination of No Hazard to Air Navigation.

(b) A Determination of No Hazard to Air Navigation issued for those construction or alteration proposals not requiring an FCC construction permit may be extended by the FAA one time for a period not to exceed 18 months.

(c) A Determination of No Hazard to Air Navigation issued for a proposal requiring an FCC construction permit may be granted extensions for up to 12 months, provided that:

(1) You submit evidence that an application for a construction permit/license was filed with the FCC for the associated site within 6 months of issuance of the determination; and

(2) You submit evidence that additional time is warranted because of FCC requirements; and

(3) Where the FCC issues a construction permit, a final Determination of No Hazard to Air Navigation is effective until the date prescribed by the FCC for completion of the construction. If an extension of the original FCC completion date is needed, an extension of the FAA determination must be requested from the FAA.

Subpart E—Petitions for Discretionary Review

§ 77.37 General.

(a) If you are the sponsor, provided a substantive aeronautical comment on a proposal in an aeronautical study, or have a substantive aeronautical comment on the proposal but were not given an opportunity to state it, you may petition the FAA for a discretionary review of a determination, revision, or extension of a determination issued by the FAA.

(b) You may not file a petition for discretionary review for a Determination of No Hazard that is issued for a temporary structure, marking and lighting recommendation, or when a proposed structure or alteration does not exceed obstruction standards contained in subpart C.

§ 77.39 Contents of a petition.

(a) You must file a petition for discretionary review in writing and it must be received by the FAA within 30 days after the issuance of a determination under § 77.31, or a revision or extension of the determination under § 77.35.

(b) The petition must contain a full statement of the aeronautical basis on which the petition is made, and must include new information or facts not previously considered or presented during the aeronautical study, including valid aeronautical reasons why the determination, revisions, or extension made by the FAA should be reviewed.

(c) In the event that the last day of the 30-day filing period falls on a weekend or a day the Federal government is closed, the last day of the filing period is the next day that is not one of the above-mentioned days.

(d) The FAA will inform the petitioner or sponsor (if other than the petitioner) and the FCC (whenever an FCC-related proposal is involved) shall be informed of the filing of the petition and that the determination is not final pending disposition of the petition.

§ 77.41 Discretionary review results.

(a) If discretionary review is granted, the FAA will inform the petitioner and the sponsor (if other than the petitioner) of the issues to be studied and reviewed.

(b) If discretionary review is denied, the FAA will notify the petitioner and the sponsor (if other than the petitioner), and the FCC, whenever a FCC-related proposal is involved, of the basis for the denial along with a statement that the determination is final.

(c) After concluding the discretionary review process, the FAA will revise, affirm, or reverse the determination.

Issued in Washington, DC, on June 1, 2006.

Nancy B. Kalinowski,

Director of System Operations Airspace and Aeronautical Information Management.

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FEDERAL TRADE COMMISSION

16 CFR Part 18

Guides for the Nursery Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests public comments on its Guides for the Nursery Industry (''Nursery Guides'' or ''Guides''). The Commission is soliciting the comments as part of the Commission's systematic review of all current Commission regulations and guides.

DATES: Written comments must be received by August 14, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Nursery Guides Regulatory Review, Matter No. P994248'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex B), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be submitted by accessing the following site: *https://secure.commentworks.com/ftc-nursery* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-nursery.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankle, (202) 326–3022, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC 20001.

SUPPLEMENTARY INFORMATION:

I. Background

The Guides for the Nursery Industry were adopted by the Commission in

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).